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Attorneys for Plaintiff: JAMES RUTHERFORD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

JAMES RUTHERFORD, an
individual,

Plaintiff,

v.

CARAVAN HOTEL GROUP, a
California corporation, dba El
Morocco Inn & Spa; and DOES 1-
10, inclusive,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For:**

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
*seq.***
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.***

Plaintiff, JAMES RUTHERFORD (“Plaintiff”), complains of Defendants
CARAVAN HOTEL GROUP, a California corporation, dba El Morocco Inn & Spa;
and DOES 1-10 (“Defendants”) and alleges as follows:

PARTIES:

1. Plaintiff JAMES RUTHERFORD suffers from spinal stenosis

1 aggravated by a herniated disc. Plaintiff also suffers from an arthritic condition in
2 his thumbs, which interferes with his ability to grab, twist, and turn objects. As a
3 result of his physical impairments, Plaintiff is substantially limited in performing
4 one or more major life activities, including but not limited to: walking, standing,
5 sleeping, ambulating, and/or sitting and uses a mobility device, including when
6 necessary, a wheelchair. Plaintiff is further substantially limited in performing one
7 or more other major life activities, including but not limited to ability to grab, twist,
8 and turn objects such as door handles. At the time of Plaintiff's visits to Defendant's
9 facility and prior to instituting this action, Plaintiff suffered from a "qualified
10 disability" under the ADA, including those set forth in this paragraph. Plaintiff is
11 also the holder of a Disabled Person Parking Placard.

12 2. Defendant CARAVAN HOTEL GROUP, a California corporation,
13 owned the property located at 66810 4th St., Desert Hot Springs, CA 92240
14 ("Property") as early as March 27, 2015, and during May, 2017, or before.

15 3. Defendant CARAVAN HOTEL GROUP, a California corporation
16 owns the Property currently.

17 4. Defendant CARAVAN HOTEL GROUP, a California corporation, dba
18 El Morocco Inn & Spa ("Owner"), owned, operated and controlled the business of
19 El Morocco Inn & Spa ("Business") as early as March 27, 2015, and during May,
20 2017, or before.

21 5. Defendant Owner owns operates and controls the Business currently.

22 6. Plaintiff does not know the true names of Defendants, their business
23 capacities, their ownership connection to the Property and Business, or their relative
24 responsibilities in causing the access violations herein complained of, and alleges a
25 joint venture and common enterprise by all such Defendants. Plaintiff is informed
26 and believes that each of the Defendants herein, including Does 1 through 10,
27 inclusive, is responsible in some capacity for the events herein alleged, or is a
28 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend

1 when the true names, capacities, connections, and responsibilities of the Defendants
2 and Does 1 through 10, inclusive, are ascertained.

3 **JURISDICTION AND VENUE**

4 7. This Court has subject matter jurisdiction over this action pursuant
5 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
6 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

7 8. This court has supplemental jurisdiction over Plaintiff's non-federal
8 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's UCRA claims are so
9 related to Plaintiff's federal ADA claims in that they have the same nucleus of
10 operative facts and arising out of the same transactions, they form part of the same
11 case or controversy under Article III of the United States Constitution.

12 9. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
13 Property which is the subject of this action is located in this district and because
14 Plaintiff's causes of action arose in this district.

15 **FACTUAL ALLEGATIONS**

16 10. Plaintiff went to the Business and Property on or about March 27, 2015,
17 and during May, 2017. On March 27, 2015, when Plaintiff went to the Business, he
18 did so with the intent to ascertain whether it would be a good hotel to enjoy a stay
19 there, including the pool, with his fiancé' who is also disabled. During May, 2017,
20 Plaintiff went to the Business to look for a prospective place to stay with his fiancé,
21 and in particular, to see if the pool area were accessible to him and his disabled
22 fiancé, for a stay there as a weekend retreat.

23 11. The Business, including the Subject Property, is a facility open to the
24 public, a place of public accommodation, and a business establishment.

25 12. Parking spaces are one of the facilities, privileges and advantages
26 reserved by Defendants to persons at the Property serving the Business.

27 13. Unfortunately, although parking spaces were one of the facilities
28 reserved for patrons, there were no van-accessible disabled parking spaces available

1 for persons with disabilities that complied with the Americans with Disability Act
2 Accessibility Guidelines (“ADAAG”) in or around March 27, 2015, and during
3 May, 2017, or at any time thereafter up to and including, the date of the filing of this
4 complaint.

5 14. Instead of having van-accessible parking on the property, Defendants
6 have: no disabled accessible van accessible parking signage at the main entrance
7 (Section 502.6); no van accessible parking space at the main entrance (Section
8 208.2.4); there was no parking access zone (Section 503.1); there is no curb ramp
9 connecting the parking area directly in front of the building entrance to the entrance
10 pathway (Section 406); the cobblestone pathway from the parking area to the
11 entrance rises approximately one inch higher than the parking area it connects to
12 without any beveling (Section 403.4); and the hotel main entrance door handle
13 requires tight grasping or twisting of the wrist (Section 404.2.7 and 309.4).

14 15. Also unfortunately, the business elected to: have a stairway instead of
15 an accessible route to the outside lounge and recreation area (Section 206.2.2); the
16 corridor connecting the outside swimming pool area has a step down approximately
17 four inches high (Section 303.4); the main swimming pool has no accessible means
18 of entry, such as a fixed pool lift, a sloped entry, a transfer wall or transfer platform
19 (Section 242); have no guest rooms available which have mobility features for the
20 disabled (Section 224.2); and, the guest rooms not required to have mobility features
21 do not comply with Section 224.1.2.

22 16. Subject to the reservation of rights to assert further violations of law
23 after a site inspection found *infra* at paragraph 26, Plaintiff asserts there are
24 additional ADA violations which affect him personally.

25 17. Plaintiff is informed and believes and thereon alleges that, currently,
26 there are no compliant accessible parking spaces with required signage and an
27 accessible path to the accessible entrance of the business designed, reserved and
28 available to persons with disabilities at the Business in addition to that alleged

1 above.

2 18. Plaintiff is informed and believes and thereon alleges that Defendants
3 had no policy or plan in place to make sure that the parking spaces with required
4 signage and an accessible path to the accessible entrance of the business were
5 available to persons with disabilities and remained compliant prior to March 25,
6 2015, and during May, 2017.

7 19. Plaintiff is informed and believes and thereon alleges Defendants have
8 no policy or plan in place to make sure that the complaints of violations alleged
9 above are available to persons with disabilities and remain compliant currently.

10 20. Plaintiff personally encountered the above alleged barriers when
11 attempting to access the Business and Property. These inaccessible conditions
12 denied the Plaintiff full and equal access and caused him difficulty, humiliation,
13 frustration and upset.

14 21. As a result of his difficulty, humiliation, frustration and upset because
15 of the inaccessible condition of the parking aisle and front access to the Business,
16 and pool, Plaintiff did not fully access the Business or Property.

17 22. Plaintiff is being deterred from patronizing the Business and its
18 accommodations on particular occasions, but intends to return to the Business for the
19 dual purpose of availing himself of the goods and services offered to the public and
20 to ensure that the Business ceases evading their responsibilities under federal and
21 state law.

22 23. The defendants have failed to maintain in working and useable
23 conditions those features required to provide ready access to persons with
24 disabilities.

25 24. The violations identified above are easily removed without much
26 difficulty or expense. They are the types of barriers identified by the Department of
27 Justice as presumably readily achievable to remove and, in fact, these barriers are
28 readily achievable to remove. Moreover, there are numerous alternative

1 accommodations that could be made to provide a greater level of access if complete
2 removal were not achievable.

3 25. Plaintiff is and has been deterred from returning and patronizing the
4 business and accompanying real property because of their knowledge of the illegal
5 barriers that exist. Plaintiff will, nonetheless, return to assess ongoing compliance
6 with the ADA and will return to patronize the Business and Property as a customer
7 once the barriers are removed.

8 26. Given the obvious and blatant violation alleged hereinabove, Plaintiff
9 alleges, on information and belief, that there are other violations and barriers in the
10 site that relate to his disabilities. Plaintiff will amend the complaint, to provide
11 proper notice regarding the scope of this lawsuit, once he conducts a site inspection.
12 However, please be on notice that Plaintiff seeks to have all barriers related to their
13 disabilities remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding
14 that once a plaintiff encounters one barrier at a site, he can sue to have all barriers
15 that relate to his disability removed regardless of whether he personally encountered
16 them).

17 27. Given the obvious and blatant violation alleged hereinabove, Plaintiff
18 alleges, on information and belief, that the failure to remove these barriers was
19 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
20 defendants exercised control and dominion over the conditions at this location, and
21 therefore, (3) the lack of accessible facilities was not an accident because had the
22 defendants intended any other configuration, they had the means and ability to make
23 the change.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

26 **42 U.S.C. § 12181 et seq.**

27 28. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
28 above and each and every other paragraph in this Complaint necessary or helpful to

1 state this cause of action as though fully set forth herein.

2 29. Under the ADA, it is an act of discrimination to fail to ensure that the
3 privileges, advantages, accommodations, facilities, goods, and services of any place
4 of public accommodation are offered on a full and equal basis by anyone who owns,
5 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).

6 Discrimination is defined, inter alia, as follows:

- 7 a. A failure to make reasonable modifications in policies, practices,
8 or procedures, when such modifications are necessary to afford
9 goods, services, facilities, privileges, advantages, or
10 accommodations to individuals with disabilities, unless the
11 accommodation would work a fundamental alteration of those
12 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 13 b. A failure to remove architectural barriers where such removal is
14 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
15 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
16 Appendix "D".
- 17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs, or to ensure that, to
21 the maximum extent feasible, the path of travel to the altered area
22 and the bathrooms, telephones, and drinking fountains serving
23 the area, are readily accessible to and usable by individuals with
24 disabilities. 42 U.S.C. § 12183(a)(2).

25 30. Any business that provides parking spaces must provide accessible
26 parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991
27 Standards, parking spaces and access aisles must be level with surface slopes not
28 exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010

Standards, access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps are not permitted to project into access aisles and parking spaces. Id. No more than a 1:48 slope is permitted. Standards § 502.4.

31. Here, the failure to ensure that accessible facilities were available and ready to be used by Plaintiff is a violation of law.

32. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

33. Given its location and options, Plaintiff will continue to desire to patronize the Business but he has been and will continue to be discriminated against due to lack of accessible facilities and, therefore, seek injunctive relief to remove the barriers.

SECOND CAUSE OF ACTION

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL

CODE § 51 *et seq.*

34. Plaintiff re-alleges and incorporates by reference all paragraphs alleged above and each and every other paragraph in this Complaint necessary or helpful to state this cause of action as though fully set forth herein.

35. California Civil Code § 51 *et seq.* guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendants are systematically violating the UCRA, Civil Code § 51 *et seq.*

36. Because Defendants violate Plaintiff's rights under the ADA, they also violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f), 52(a).) These violations are ongoing.

37. Defendants' actions constitute intentional discrimination against Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants have been previously put on actual notice that its premises are inaccessible to Plaintiff as above alleged. Despite this knowledge, Defendants maintain the Property and Business in an inaccessible form.

38. Because the violation of the Unruh Civil Rights Act resulted in difficult, discomfort or embarrassment for the Plaintiff, Defendants are also responsible for statutory damages, i.e. a civil penalty. (Civ. Code § 55.56(a)-(c).)

PRAYER

WHEREFORE, Plaintiff prays that this court award damages provide relief as follows:

1. A preliminary and permanent injunction enjoining Defendants from further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code § 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note: Plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disable Persons Act at all.**

2. An award of actual damages and statutory damages of not less than \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for each time he visits an establishment that contains architectural barriers that deny the Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.* (2005) 431 F.Supp.2d 1088, 1091.)

3. For reasonable attorneys' fees, litigation expenses, and costs of suit, pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

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DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully request a trial by jury on all appropriate issues raised in this Complaint.

Dated: June 21, 2017

MANNING LAW, APC

By: /s/ Joseph R. Manning Jr., Esq.
Joseph R. Manning Jr., Esq.
Michael J. Manning, Esq.
Craig G. Côté, Esq.
Attorneys for Plaintiff